Prince George's Jury to Decide:

By Lawrence Meyer
Washington Post Staff Writer

The jury of six women and six men sitting in judgement of Arthur H. Bremer may be faced with questions far more difficult than whether or not he shot Alabama Gov. George C. Wallace and three other persons in the Laurel Shopping Center on May 15.

The defense, although not conceding that Bremer shot Wallace and three others, contends that Bremer is not guilty of the charges against him because he was insane at the time of the shooting.

The jury in Prince George's County Circuit Court already has heard testimony—often conflictin— timony—often conflicing— ecution experts on the state of the defendant's mind at the time Wallace was shot.

If the jury determines that Bremer committed the acts of which he is accused, then it must determine whether he was "responsible" for them. To make this decision the jurors would in effect, have to understand the defendant's mind to determine if his behavior meets the legal—not the psychiatric— definition of insanity.

For what a psychiatrist may view as insane, the law may see as merely eccentric or erratic.

The legal test in Maryland, established in 1967, says that a defendant "is not responsible for criminal conduct and shall be found insane at the time of the commission of the alleged crime if, at the time of such conduct as a result of mental disorder, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law."

This test, a modified version of the American Law Institute's model penal code, has been adopted in one form or another by several states as well as 10 of the 11 federal judicial circuits, including the District of Columbia.

The key phrase in the Maryland law is whether the defendant "lacks substantial capacity" to know what he is doing is criminal or to act within the law.

Both the prosecution and the defense may offer their interpretation of this key phrase. The judge, in his instructions, may try to guide the jury. But it is for the 12 jury members to determine whether the defendant before them had that substantial capacity."

Before 1967, Maryland had used the far more stringent "M'Naghten Rule." Under this rule, a defendant claiming to be legally insane had to show that he was laboring under a "defect of reason" or from a "disease of the mind." He had to show that his men-

Was Arthur Bremer Insane?

tal condition was such that he did not know "the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong."

This principle often is referred to as the "right and wrong" test.

Under the M'Naghten Rule, psychiatrists generally were limited in their testimony to stating whether they believed the defendant knew what he was doing at the time of the crime. If he knew what he was doing, the issue was then whether he could distinguish right from wrong.

The current Maryland legal test allows psychiatrists to broaden their testimony to describe what they believe was the state of the defendant's mind at the time of the crime. Psychiatrists may attempt to suggest whether they believe the defendant was legally insane or not, but it is ultimately for the jury to decide whether the test has been met.

The current Maryland law, amended in 1970, defines "mental disorders" as any "mental illness, or mental retardation or any other form of behavioral or emotional illness resulting from any psychiatric or neurological disorder."

Lawyers generally consider this definition to be a broad one. Psychiatrists see the definition as applying to serious mental disorders—psychosis rather than neurosis.

According to one psychiatrist, who asked not to be identified, a psychotic patient—one who has a relatively serious mental disorder—can still have lucid moments when his mental state would not meet the Maryland legal insanity test. To meet the test of insanity, the act would have to be committed when the defendant's psychosis was "acute."

But again, these psychiatric descriptions still must be judged by the legal definition. In Maryland, the judgment must be made by the lay persons serving on the jury.

The burden of judging enters into the trial when the judge finds that sufficient doubt exists about the sanity of the defendant. Prince George's County Circuit Court Judge Ralph W. Powers already has ruled that doubt exists in the Bremer trial.

The insanity plea would permit Bremer to be acquitted even if the jury found he had shot Wallace. But Bremer could be committed to an institution for three months or more until a court decides that he would not be a danger to either himself or society.